

§ 58-10-345. Licensing; authority; confidentiality.

(a) Any business entity, when permitted by its organizational documents, may apply to the Commissioner for a license to do any insurance comprised in G.S. 58-7-15; provided, however, that:

- (1) No pure captive insurance company shall insure any risks other than those of its parent and affiliated companies.
- (2) No association captive insurance company shall insure any risks other than those of its association, those of the member organizations of its association, and those of a member organization's affiliated companies.
- (3) No industrial insured captive insurance company shall insure any risks other than those of the industrial insureds that comprise the industrial insured group, [and] those of their affiliated companies.
- (4) No risk retention group shall insure any risks other than those of its members and owners.
- (5) No captive insurance company shall provide personal motor vehicle or homeowner's insurance coverage or any component of those coverages on a direct basis.
- (6) No captive insurance company shall accept or cede reinsurance except as provided in G.S. 58-10-445 and G.S. 58-10-605.
- (7) No captive insurance company shall provide accident and health insurance on a direct basis.
- (8) No captive insurance company shall provide workers' compensation and employer's liability insurance on a direct basis.
- (9) No captive insurance company shall provide life insurance or annuities on a direct basis.
- (10) A special purpose captive insurance company may provide insurance or reinsurance or both for risks as approved by the Commissioner.

(b) No captive insurance company shall transact any insurance business in this State unless:

- (1) It obtains a license from the Commissioner pursuant to subsection (c) of this section authorizing it to do insurance business in this State.
- (2) Its board of directors or committee of managers or, in the case of a reciprocal insurer, its subscribers' advisory committee holds at least one meeting each year in this State. A captive insurance company will be exempt from this board meeting requirement if the captive insurance company utilizes the services of at least two of the following North Carolina-based service providers:
 - a. Legal.
 - b. Accounting.
 - c. Actuarial.
 - d. Investment advisor.
 - e. Captive manager.
 - f. Other service providers acceptable to the Commissioner.
- (3) It maintains its principal place of business in this State.
- (4) It appoints a registered agent to accept service of process and to otherwise act on its behalf in this State, provided that whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Commissioner shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served and such service shall be done in accordance with G.S. 58-16-30.

- (c) In order to receive a license to issue policies of insurance as a captive insurance company in this State, an applicant business entity shall meet all of the following requirements:
- (1) The applicant business entity shall submit its organizational documents to the Commissioner. If the Commissioner approves the organizational documents, then the Commissioner shall issue a certificate to the applicant business entity certifying the Commissioner's approval. The applicant business entity shall submit the organizational documents, along with a copy of the certificate of approval issued by the Commissioner, and the required filing fees for organizational documents prescribed by North Carolina law to the Secretary of State for filing. Upon filing the organizational documents, the Secretary of State shall issue a certificate of filing to the applicant business entity. The applicant business entity shall submit a copy of the certificate of filing relative to the applicant business entity's organizational documents issued by the Secretary of State to the Commissioner.
 - (2) The applicant business entity shall file a statement under oath of its president and secretary showing its financial condition.
 - (3) The applicant business entity shall file its plan of operation.
 - (4) The applicant business entity shall file other documents as required by the Commissioner.
 - (5) The applicant business entity shall also file with the Commissioner evidence of all of the following:
 - a. The liquidity of the captive insurance company is sufficient relative to the risks to be insured.
 - b. The adequacy of the expertise, experience, and character of the person or persons who will manage it.
 - c. The overall soundness of its plan of operation.
 - d. The adequacy of the loss prevention programs of its insureds.
 - e. Such other factors deemed relevant by the Commissioner in ascertaining whether the applicant business entity will be able to meet its policy obligations.
 - (6) No less than the amount required by G.S. 58-10-370, in a form acceptable to the Commissioner, shall be paid into the applicant business entity.
 - (7) The applicant business entity shall submit to the Commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with such additional information as the Commissioner may require.
- (d) Whenever a captive insurance company desires to amend the organizational documents submitted pursuant to subdivision (c)(1) of this section, the company shall submit the amended organizational documents to the Commissioner. If the Commissioner approves the amendment, then the Commissioner shall issue a certificate to the company certifying the Commissioner's approval. The company shall submit the organizational documents, along with a copy of the certificate of approval issued by the Commissioner, and the required filing fees for organizational documents prescribed in North Carolina law to the Secretary of State for filing. Upon filing the organizational documents, the Secretary of State shall issue a certificate of filing to the company. The company shall submit a copy of the certificate of filing relative to the company's organizational documents issued by the Secretary of State to the Commissioner.
- (e) If a captive insurance company makes any subsequent material change to any item in the description submitted pursuant to subdivision (c)(7) of this section, then the captive insurance company shall submit an appropriate revision to the Commissioner for approval and shall not offer any additional kinds of insurance until a revision of such description is approved by the

Commissioner. The captive insurance company shall inform the Commissioner of any material change in rates within 30 days of the adoption of such change.

(f) Information submitted pursuant to this section is confidential and may be made public by the Commissioner or the Commissioner's designee only upon an order of a court of competent jurisdiction except:

- (1) This subsection shall not apply to any risk retention group.
- (2) The Commissioner shall have the discretion to disclose such information to a public official having jurisdiction over the regulation of insurance in another state, provided that:
 - a. The public official agrees in writing to maintain the confidentiality of such information; and
 - b. The laws of the state in which the public official serves require the information to be and to remain confidential.
- (3) Organizational documents filed with the Secretary of State shall continue to be nonconfidential public records in the Secretary of State's office.

(g) The Commissioner is authorized to retain legal, financial, and audit services from outside the Department, the costs of which shall be reimbursed by the business entity. G.S. 58-2-160 shall apply to audits and processing conducted under the authority of this section.

(h) If the Commissioner is satisfied that the documents and statements filed by an applicant business entity comply with this section, then the Commissioner shall grant a license authorizing it to do insurance business in this State.

(i) A business entity incorporated, formed, or organized under the laws of another jurisdiction that is licensed as a captive insurance company under the provisions of this Part shall have the privileges and be subject to the provisions of the laws of this State or the laws of such other jurisdiction, as applicable, under which such business entity is incorporated, formed, or organized. In the event of a conflict between the provisions of the laws of this State and the laws of such other jurisdiction under which such business entity is incorporated, formed, or organized, the provisions of this Part shall control. (2013-116, s. 1; 2014-65, s. 2; 2015-99, s. 1; 2016-78, s. 4.1(b); 2018-120, s. 5.1(a).)